

# 8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, Washington, DC 20231, on the date shown below.

Dated: March 11, 2003

Signature:

Thomas J. Wrona, Ph.D.

Docket No.: 27373/36638A  
(PATENT)



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Weichselbaum, et al.

Application No.: 09/964,042

Group Art Unit: 1635

Filed: September 26, 2001

Examiner: J.E. Angell

For: Treatment of Tumors with Genetically  
Engineered Herpes Virus

**PETITION FOR ACCEPTANCE OF AN UNINTENTIONALLY DELAYED CLAIM  
FOR BENEFIT OF A PRIOR-FILED APPLICATION UNDER 35 U.S.C. §120.**

**Box DAC**  
Petitions Branch  
Commissioner for Patents  
Washington, DC 20231

**RECEIVED**

APR 22 2003

OFFICE OF PETITIONS

Dear Sir:

Pursuant to 37 C.F.R. § 1.78(a)(3), Applicant hereby petitions the Commissioner to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed U.S. application Serial No. 09/244,748. The present application is a Continuation application that was filed on September 26, 2001. The transmittal form filed with the application indicated that the present application is a Continuation of 09/629,021, and requested amendment to the specification to indicate the relationship between the two applications.

However, because 09/069,021 was itself a Continuation application of 09/244,748, the transmittal form should have also listed the 09/244,748 application and included an indication of the relationship in the amendment to the specification. According to 37 C.F.R. § 1.78(a)(2)(ii), the reference to benefit to the 09/244,748 application must have been submitted by January 26, 2002. Applicant includes the proper reference in an amendment submitted

04/21/2003 SLUANG1 00000029 132855 09964042

02 FC:1454 1300.00 CH

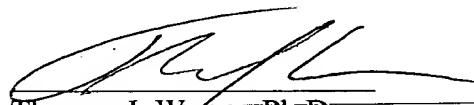
Application No.: 09/964,042

herewith, which requests amendment of the specification to include the reference, "This is a Continuation of U.S. application Serial No. 09/629,021, filed July 31, 2000, now abandoned, which is a Continuation of U.S. application Serial No. 09/244,748, filed February 5, 1999, now abandoned."

As indicated in the Declaration of Joseph A. Williams, Jr. submitted herewith, the reference to the benefit of the present application to the filing date of the 09/244,748 application and the relationship between the applications was unintentionally omitted from the transmittal form of the present case. Applicant hereby states that the entire delay between the date the claim was due under 37 C.F.R. § 1.78(a)(2)(ii) and the filing herewith was unintentional. Applicant authorizes the Patent Office to charge Deposit Account No. 13-2855 for the surcharge of \$1300.00 as set forth in 37 C.F.R. § 1.17(t). A copy of this paper is included for that purpose. Applicant submits that it has satisfied the requirements of 37 C.F.R. § 1.78(a)(3). Applicant respectfully requests the Commissioner grant this petition to accept the unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed U.S. application Serial No. 09/244,748.

March 11, 2003

Respectfully submitted,



---

Thomas J. Wrona, Ph.D.  
Reg. No. 44,410  
Marshall, Gerstein & Borun  
233 South Wacker Drive  
6300 Sears Tower  
Chicago, IL 60606  
Tel: 312/474-6300  
Fax: 312/474-0448